

**MINUTES OF THE
WATER ISSUES TASK FORCE**

Thursday, September 14, 2006 – 9:00 a.m. – Room W125 House Building

Members Present:

Sen. Peter C. Knudson, Senate Chair
Rep. David Ure, House Chair
Sen. Patrice Arent
Rep. David N. Cox
Sen. Beverly Ann Evans
Rep. Ben C. Ferry
Rep. James R. Gowans
Rep. Brad King
Rep. Patrick L. Painter

Members Absent:

Sen. Mike Dmitrich
Sen. Thomas V. Hatch
Rep. Margaret Dayton
Rep. Michael T. Morley

Staff Present:

Mr. Brian Allred, Policy Analyst
Mr. Mark Steinagel, Policy Analyst
Mr. Chris Parker, Associate General Counsel
Ms. Emily Brown, Associate General Counsel
Ms. Joy Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Knudson called the meeting to order at 9:10 a.m. Sen. Dmitrich and Rep. Dayton were excused from the meeting.

MOTION: Rep. Ure moved to approve the minutes of the August 31, 2006 meeting. The motion passed unanimously. Rep. Cox and Rep. Ferry were absent for the vote.

2. Instream Flow

A. Water Quality Presentation

Mr. Walt Baker, Director, Division (Division of Water Quality), distributed a copy of his presentation "Instream Flow Discussion." He explained that the Division establishes water quality standards as the mechanism to protect beneficial uses. He discussed the discharges made to waters of Utah. Effluent limits are calculated to attain water quality standards and maintain beneficial uses. Instream flow and upstream water quality largely drive how much pollutants a facility can discharge. Mr. Baker discussed the Snyderville Basin and reported that the receiving stream in East Canyon has excessive amounts of phosphorus which is very costly to remove.

Mr. Mike Luers, Snyderville Basin Water Reclamation District, pointed out that the cost for phosphorus removal in the Snyderville Basin is \$3.6 million with an additional annual cost of \$250,000 for chemicals.

Rep. Ferry asked what the maximum capacity of the plant is. Mr. Luers responded that plant capacity is currently 4 million gallons. Future capacity expansion is anticipated to be 6.2 million gallons. He noted that the total cost of expansion is expected to be \$27,000,000 of which 1/4 will be used for phosphorus removal. He stated there are currently 10,000 connections in the basin. With the expansion of the Snyderville and East Canyon facilities, connections are expected to increase approximately 45 percent.

Rep. Ferry asked what the anticipated monthly fee increase will be once expansion is accomplished. Mr. Luers said the current monthly fee is approximately \$30 per residential connection. The estimated

increase for operation and maintenance is 5 percent for each of the next four years.

Mr. Baker pointed out that approximately 18 POTWs (public owned treatment works) discharge to streams where an instream water right might be helpful. Six are owned by special service districts, not municipalities.

Rep. Ferry asked how ammonia is taken from the wastewater. Mr. Baker said there are many technologies available but typically an oxidation ditch is very effective at removing ammonia.

Mr. Baker pointed out that downstream users would largely not be impacted by POTWs holding instream water rights solely within a mixing zone. Existing statute does not address this problem. Only the Division of Wildlife Resources and the Division of State Parks and Recreation can hold water rights for instream flows. He stated he is supportive of Trout Unlimited's proposal, however, it will not help POTWs. POTWs cannot afford to rely on instream flows only being available for ten years.

Rep. Ferry questioned if the standards for POTWs differ from industry standards concerning discharge. Mr. Baker said the science used to establish the standards is the same. He said a temporary instream flow permit would provide some time for a POTW to achieve the technology to meet permit limits. Mr. Baker pointed out Snyderville is at the end of its technological limits to meet phosphorus standards.

Mr. Baker recommended that POTWs be allowed to own instream flow water rights in limited cases if it provides a cost-effective solution to a water quality problem. Instream flows should be limited only through the mixing zone after which they are susceptible to the call of the river.

Rep. Painter asked what is used to treat phosphorus. Mr. Baker indicated alum is the chemical of choice.

B. Publicly Owned Treatment Works Draft Proposal

Mr. Jerry Kinghorn, Parsons Kinghorn Harris, distributed "Proposed Amendments to Utah Instream Flow Statute." He stated the proposed bill is a relatively narrow proposal to solve a small number of problems that will save the taxpayers a large amount of money. The proposal attempts to add owners of POTWs to the list of those that can own instream flows for limited purposes.

Sen. Arent asked if other groups have participated in developing the legislation. Mr. Kinghorn said they have invited any group that has an interest in the issue to participate in the discussion process.

Mr. Kinghorn reviewed the proposed changes to the current statute. He noted that additional language may be submitted. He emphasized that the proposal does not allow enlargement of the water right sought to be changed nor will it allow for the change to impair any vested water right. He requested staff's assistance in putting the proposal in the proper format.

Sen. Arent asked if the application filing deadline in the statute should be changed. Mr. Kinghorn said since it is in existing law, they did not see a reason to change it.

Rep. Ferry asked if it wouldn't be more appropriate that instream flow be the last resort. Mr. Kinghorn said it is a philosophical question to be answered. He said the water community would prefer to leave it on parity with other approaches.

Rep. Cox asked if using instream flows as proposed would always be the preferred and least expensive method. Mr. Kinghorn said it may or may not be the most cost-effective method. Water rights are extremely expensive.

Mr. Fred Finlinson, Utah Water Coalition, explained that return flow is used to meet the call of water users down the river. The only part that would be available for instream flow would be the depleted amount of water.

Rep. Ferry asked if POTWs would anticipate having transbasin transfers or altering a natural stream to accomplish what is being proposed. Mr. Kinghorn answered no to both questions.

Rep. Ferry questioned if POTWs want the ability to have the authority for a call of the stream. Mr. Kinghorn said POTWs will monitor the quantity of water that is in the instream flow right and want to be able to protect that quantity of water down past the mixing zone.

Rep. Ure asked if the proposal was classifying instream flow as a nonconsumptive use. Mr. Kinghorn responded affirmatively.

Rep. Ure asked if major plants with the most problems are on the Provo River drainage. Mr. Kinghorn indicated that POTWs are spread all around the state. Mr. Finlinson explained the most critical need is on the East Canyon which is the Weber drainage.

Mr. Todd Bingham, Bureau (Utah Farm Bureau), expressed concern that the language regarding beneficial use is too broad. Priority dates should be recognized and no downstream users should be affected. He said members of the Bureau are concerned with artificial inflation of the market and are more comfortable with leasing water rather than selling it.

Rep. Ure requested that Mr. Bingham provide recommendations to the proposed legislation. Mr. Bingham said the Bureau has water attorneys that are reviewing the issue to help draft recommendations. He said they will continue to look for unintended consequences.

Rep. Ferry asked why POTWs should be treated differently than AFOs (animal feeding operations) and CAFOs (confined animal feeding operations). Mr. Bingham said the Bureau has zero tolerance for CAFOs. Some members of the Bureau believe that POTWs should be held to a similar standard.

Rep. Ferry said those who own AFOs and CAFOs are required to meet stringent federal standards. He felt there is a double standard in dealing with those types of operations. Mr. Kinghorn explained that agricultural operations are generally in the category of nonpoint source pollution.

Mr. Baker mentioned that nonpoint source and best management practices are two different issues.

Mr. Finlinson said many of the concepts that have been discussed are applicable in both the POTW and Trout Unlimited proposals.

Rep. Ure asked if the POTWs and Trout Unlimited have considered how many streams they have in common that instream flow could serve both purposes at the same time. Mr. Kinghorn said Trout Unlimited's proposal encompasses entirely different streams. He said POTWs have no objection to Trout

Unlimited's proposal. He stressed the importance of obtaining the costs of treatment and alternatives for instream flows.

Mr. Tim Hawkes, Trout Unlimited, stated there is an overlap between the two proposals. However, there are fundamental differences in the problems being addressed.

MOTION: Rep. Ure moved to authorize staff to open a bill file to address the POTW issue. The motion passed unanimously.

Rep. Ure recommended that all suggestions for the legislation be submitted in writing.

MOTION: Sen. Arent moved to open a bill file to address water conservation. The motion passed unanimously.

Future meetings of the Task Force were set for September 28 at 1:00 p.m. and October 11 at 8:30 a.m.

Mr. Finlinson distributed a memorandum from the Utah Water Coalition regarding possible nonprofit corporate changes. Mr. Finlinson was requested to address this issue at the September 28 meeting.

MOTION: Sen. Arent moved to adjourn. The motion passed unanimously.

Chair Knudson adjourned the meeting at 11:05 a.m.